



Pipeline Safety and Security: Federal Programs

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Summary

Nearly half a million miles of oil and natural gas transmission pipeline crisscross the United States. While an efficient and fundamentally safe means of transport, many pipelines carry hazardous materials with the potential to cause public injury and environmental damage. The nation's pipeline networks are also widespread, running alternately through remote and densely populated regions; consequently, these systems are vulnerable to accidents and terrorist attack.

The 109th Congress passed the Pipeline Safety Improvement Act of 2006 (P.L. 109-468) to improve pipeline safety and security practices. The 110th Congress passed the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), which mandated pipeline security inspections and potential enforcement (§ 1557) and required federal plans for critical pipeline security and incident recovery (§ 1558). The 111th Congress is overseeing the implementation of these acts and considering new legislation related to the nation's pipeline network. Recent legislative proposals include the Clean, Affordable, and Reliable Energy Act of 2009 (S. 1333), which would change natural gas pipeline integrity assessment intervals (§ 401); the Transportation Security Administration Authorization Act (H.R. 2220), which would mandate a new federal pipeline security study (§ 406); and the Hazardous Material Transportation Safety Act of 2009 (H.R. 4106), which seeks to improve the collection and use of hazardous material transportation incident data (§ 203) and increase staffing at the Pipeline and Hazardous Material Safety Administration (§304).

The Pipeline and Hazardous Materials Safety Administration (PHMSA), within the Department of Transportation (DOT), is the lead federal regulator of pipeline safety. PHMSA uses a variety of strategies to promote compliance with its safety regulations, including inspections, investigation of safety incidents, and maintaining a dialogue with pipeline operators. The agency clarifies its regulatory expectations through a range of communications and relies upon a range of enforcement actions to ensure that pipeline operators correct safety violations and take preventive measures to preclude future problems. The Transportation Security Administration (TSA), within the Department of Homeland Security (DHS), is the lead federal agency for security in all modes of transportation—including pipelines. The agency oversees industry's identification and protection of pipelines by developing security standards; implementing measures to mitigate security risk; building stakeholder relations; and monitoring compliance with security standards, requirements, and regulation. While PHMSA and TSA have distinct missions, pipeline safety and security are intertwined.

Although pipeline impacts on the environment remain a concern of some public interest groups, both federal government and industry representatives suggest that federal pipeline programs have been on the right track. As oversight of the federal role in pipeline safety and security continues, Congress may focus on the effectiveness of state pipeline damage prevention programs, the promulgation of low-stress pipeline regulations, federal pipeline safety enforcement, and the relationship between DHS and the DOT with respect to pipeline security, among other provisions in federal pipeline safety regulation. In addition to these specific issues, Congress may wish to assess how the various elements of U.S. pipeline safety and security activity fit together in the nation's overall strategy to protect transportation infrastructure.

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Introduction¹

Nearly half a million miles of oil and natural gas transmission pipeline crisscross the United States.² These pipelines are integral to U.S. energy supply and have vital links to other critical infrastructure, such as power plants, airports, and military bases. While an efficient and fundamentally safe means of transport, many pipelines carry volatile, flammable, or toxic materials with the potential to cause public injury and environmental damage. The nation's pipeline networks are also widespread, running alternately through remote and densely populated regions; consequently, these systems are vulnerable to accidents and terrorist attack. The 2006 partial shutdown of the Prudhoe Bay, Alaska oil field—the largest in the United States—due to pipeline safety problems demonstrated this vulnerability.

The 109th Congress passed the Pipeline Safety Improvement Act of 2006 (P.L. 109-468) to improve pipeline safety and security practices. The 110th Congress passed the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), which mandated pipeline security inspections and potential enforcement (§ 1557) and required federal plans for critical pipeline security and incident recovery (§ 1558). The 111th Congress is overseeing the implementation of these acts and considering new legislation related to the nation's pipeline network. Recent legislative proposals include the Clean, Affordable, and Reliable Energy Act of 2009 (S. 1333), which would change natural gas pipeline integrity assessment intervals (§ 401); the Transportation Security Administration Authorization Act (H.R. 2220), which would mandate a new federal pipeline security study (§ 406); and the Hazardous Material Transportation Safety Act of 2009 (H.R. 4106), which seeks to improve the collection and use of hazardous material transportation incident data (§ 203) and would increase staffing at the Pipeline and Hazardous Material Safety Administration (§304).

Pipeline Industry Characteristics

Roughly 170,000 miles of oil pipeline in the United States carry over 75% of the nation's crude oil and around 60% of its refined petroleum products.³ There are nearly 200 *interstate* oil pipelines, which account for roughly 80% of total pipeline mileage and transported volume.⁴ The U.S. natural gas pipeline network consists of around 217,000 miles of *interstate* transmission, and 89,000 miles of *intrastate* transmission.⁵ It also contains some 20,000 miles of field and gathering pipeline, which connect gas extraction wells to processing facilities.⁶ Around 120 systems make

¹ Parts of this report were previously published in CRS Report RL31990, *Pipeline Security: An Overview of Federal Activities and Current Policy Issues*, by Paul W. Parfomak.

² In this report "oil" includes petroleum and other hazardous liquids such as gasoline, jet fuel, diesel fuel, home heating oil, propane, and butane unless otherwise noted. Other hazardous liquids transported by pipeline include anhydrous ammonia, carbon dioxide, kerosene, liquefied ethylene, and some petrochemical feedstocks.

³ Pipeline and Hazardous Materials Safety Admin., "Natural Gas Transmission, Gas Distribution, and Hazardous Liquid Pipeline Annual Mileage," Web table, January 12, 2010, <http://www.phmsa.dot.gov/pipeline/library/data-stats>.

⁴ Richard A Rabinow, "The Liquid Pipeline Industry in the United States: Where It's Been, Where It's Going," Prepared for the Association of Oil Pipe Lines, April 2004, p. 4.

⁵ Energy Information Administration, "Estimated Natural Gas Pipeline Mileage in the Lower 48 States, Close of 2008," Online table, 2009. http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/mileage.html

⁶ Pipeline and Hazardous Materials Safety Admin., January 12, 2010.

up the *interstate* network; another 90 or so systems operate strictly within individual states.⁷ These *interstate* and *intrastate* gas transmission pipelines feed around 1.1 million miles of regional lines in some 1,300 local distribution networks.⁸ Natural gas pipelines also connect to 113 liquefied natural gas (LNG) storage sites, which augment pipeline gas supplies during peak demand periods.⁹

Pipeline Safety Record

Taken as a whole, releases from pipelines cause few annual fatalities compared to other product transportation modes. Oil pipelines reported an average of 2.6 deaths per year from 2004 through 2008; natural gas transmission pipelines reported an average of 1.0 death per year during the same period.¹⁰ Accidental pipeline releases result from a variety of causes, including third-party excavation, corrosion, mechanical failure, control system failure, and operator error. Natural forces, such as floods and earthquakes, can also damage pipelines. According to the Department of Transportation (DOT), there were 103 oil pipeline accidents and 63 natural gas transmission pipeline accidents in 2008.¹¹ Although pipeline releases have caused relatively few fatalities in absolute numbers, a single pipeline accident can be catastrophic. For example, a 1999 gasoline pipeline explosion in Bellingham, Washington, killed two children and an 18-year-old man, and caused \$45 million in damage to a city water plant and other property. In 2000, a natural gas pipeline explosion near Carlsbad, New Mexico, killed 12 campers, including four children.¹² In 2006, damaged pipelines on the North Slope of Alaska leaked over 200,000 gallons of crude oil in an environmentally sensitive area. Such accidents have generated substantial scrutiny of pipeline regulation and increased state and community activity related to pipeline safety.¹³

Pipeline Security Risks

Pipelines are vulnerable to vandalism and terrorist attack with firearms, with explosives, or by other physical means. Some pipelines may also be vulnerable to “cyber-attacks” on computer control systems or attacks on electricity grids or telecommunications networks.¹⁴ Oil and gas pipelines have been a target of terrorists globally, including within the United States. In Colombia, for example, rebels have bombed the Caño Limón oil pipeline and other pipelines over 950 times since 1993.¹⁵ In 1996, London police foiled a plot by the Irish Republican Army to

⁷ Energy Information Administration, “About U.S. Natural Gas Pipelines,” June 2007, pp. 1, 29. http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/fullversion.pdf

⁸ BTS, September 2008.

⁹ Michelle M. Foss, “Introduction to LNG,” Center for Energy Economics, University of Texas at Austin, January 2007, p. 5.

¹⁰ Pipeline and Hazardous Materials Safety Administration, “Significant Pipeline Incidents,” Web page, January 25, 2010. <http://primis.phmsa.dot.gov/comm/reports/safety/SigPSI.html>

¹¹ Ibid.

¹² National Transportation Safety Board, *Pipeline Accident Report* PAR-03-01, February 2003.

¹³ See, for example: Bellingham Herald Editorial Board, “Citizen Need Panel To Monitor Pipeline Safety,” *Bellingham Herald* (WA), January 24, 2010; Janet Zink, “Fueling the Resistance,” *St. Petersburg Times*, December 16, 2007; W. Loy, “Slope Mayor Questions Leak Detection,” *Anchorage Daily News*, March 14, 2006; J. Nesmith and R. K. M. Haurwitz, “Pipelines: The Invisible Danger,” *Austin American-Statesman*, July 22, 2001.

¹⁴ J.L. Shreeve, “Science & Technology: The Enemy Within,” *The Independent*. London, UK, May 31, 2006, p. 8.

¹⁵ Government Accountability Office (GAO), *Security Assistance: Efforts to Secure Colombia’s Caño Limón-Coveñas Oil Pipeline Have Reduced Attacks, but Challenges Remain*, GAO-05-971, September 2005, p. 15; Stratfor (continued...)

bomb gas pipelines and other utilities across the city.¹⁶ Militants in Nigeria have repeatedly attacked pipelines and related facilities, including the simultaneous bombing of three oil pipelines in May, 2007.¹⁷ A Mexican rebel group similarly detonated bombs along Mexican oil and natural gas pipelines in July and September, 2007.¹⁸ In June, 2007, the U.S. Department of Justice arrested members of a terrorist group planning to attack jet fuel pipelines and storage tanks at the John F. Kennedy (JFK) International Airport in New York.¹⁹ Natural gas pipelines in British Columbia, Canada, were bombed six times between October 2008 and July 2009 by unknown perpetrators.²⁰

Since September 11, 2001, federal warnings about Al Qaeda have mentioned pipelines specifically as potential terror targets in the United States.²¹ One U.S. pipeline of particular concern and with a history of terrorist and vandal activity is the Trans Alaska Pipeline System (TAPS), which transports crude oil from Alaska's North Slope oil fields to the marine terminal in Valdez. TAPS runs some 800 miles and delivers nearly 17% of United States domestic oil production.²² In 1999, Vancouver police arrested a man planning to blow up TAPS for personal profit in oil futures.²³ In 2001, a vandal's attack on TAPS with a high-powered rifle forced a two-day shutdown and caused extensive economic and ecological damage.²⁴ In January 2006, federal authorities acknowledged the discovery of a detailed posting on a website purportedly linked to Al Qaeda that reportedly encouraged attacks on U.S. pipelines, especially TAPS, using weapons or hidden explosives.²⁵ In November 2007 a U.S. citizen was convicted of trying to conspire with Al Qaeda to attack TAPS and a major natural gas pipeline in the eastern United States.²⁶ To date, there have been no known Al Qaeda attacks on TAPS or other U.S. pipelines, but such attacks remain a possibility.

(...continued)

Forecasting, Inc.," Colombia: The FARC's Low-Level Pipeline Campaign," *Stratfor Today*, June 23, 2008. http://www.stratfor.com/analysis/colombia_farc_low_level_pipeline_campaign?ip_auth_redirect=1

¹⁶ President's Commission on Critical Infrastructure Protection, *Critical Foundations: Protecting America's Infrastructures*, Washington, DC, October 1997.

¹⁷ K. Houreld, "Militants Say 3 Nigeria Pipelines Bombed," *Associated Press*, May 8, 2007.

¹⁸ Reed Johnson, "Six Pipelines Blown Up in Mexico," *Los Angeles Times*, September 11, 2007. p A-3.

¹⁹ U.S. Dept. of Justice, "Four Individuals Charged in Plot to bomb John F. Kennedy International Airport," Press release, June 2, 2007.

²⁰ Elise Stolte, "EnCana Puts Record \$1M on Bomber's Head," *Edmonton Journal*, July 31, 2009.

²¹ "Already Hard at Work on Security, Pipelines Told of Terrorist Threat," *Inside FERC*, McGraw-Hill Companies, January 3, 2002.

²² Alyeska Pipeline Service Co., Internet page, Anchorage, AK, February 8, 2009. <http://www.alyeska-pipe.com/about.html>.

²³ D. S. Cloud, "A Former Green Beret's Plot to Make Millions Through Terrorism," *Ottawa Citizen*, December 24, 1999, p. E15.

²⁴ Y. Rosen, "Alaska Critics Take Potshots at Line Security," *Houston Chronicle*, February 17, 2002.

²⁵ W. Loy, "Web Post Urges Jihadists to Attack Alaska Pipeline," *Anchorage Daily News*, January 19, 2006.

²⁶ U.S. Attorney's Office, Middle District of Pennsylvania, "Man Convicted of Attempting to Provide Material Support to Al-Qaeda Sentenced to 30 Years' Imprisonment," Press release, November 6, 2007; A. Lubrano and J. Shiffman, "Pa. Man Accused of Terrorist Plot," *Philadelphia Inquirer*, February 12, 2006, p. A1.

Office of Pipeline Safety

The Natural Gas Pipeline Safety Act of 1968 (P.L. 90-481) and the Hazardous Liquid Pipeline Act of 1979 (P.L. 96-129) are two of the key early acts establishing the federal role in pipeline safety. Under both statutes, the Transportation Secretary is given primary authority to regulate key aspects of interstate pipeline safety: design, construction, operation and maintenance, and spill response planning. Pipeline safety regulations are covered in Title 49 of the *Code of Federal Regulations*.²⁷ The DOT administers pipeline regulations through the Office of Pipeline Safety (OPS) within the Pipelines and Hazardous Materials Safety Administration (PHMSA). The OPS has approximately 200 full-time equivalent staff, including inspectors, based in Washington, D.C., Atlanta, Kansas City, Houston, and Denver.²⁸ In addition to its own staff, PHMSA's enabling legislation allows the agency to delegate authority to *intrastate* pipeline safety offices, and allows state offices to act as "agents" administering *interstate* pipeline safety programs (excluding enforcement) for those sections of *interstate* pipelines within their boundaries.²⁹ Over 400 state pipeline safety inspectors are available in 2010.

PHMSA's pipeline safety program is funded primarily by user fees assessed on a per-mile basis on each regulated pipeline operator (49 U.S.C. § 60107). P.L. 109-468 authorizes annual pipeline safety program expenditures (§ 18) of \$79.0 million in FY2007, \$86.2 million in FY2008, \$91.5 million in FY2009, and \$96.5 million in FY2010. The President's FY2010 budget request included \$105.2 million for pipeline safety.³⁰ The FY2011 budget requests \$111.1 million.³¹

PHMSA uses a variety of strategies to promote compliance with its safety standards. The agency conducts physical inspections of facilities and construction projects; conducts programmatic inspections of management systems, procedures, and processes; investigates safety incidents, and maintains a dialogue with pipeline operators. The agency clarifies its regulatory expectations through published protocols and regulatory orders, guidance manuals, and public meetings. PHMSA relies upon a range of enforcement actions, including administrative actions and civil penalties, to ensure that operators correct safety violations and take measures to preclude future safety problems. From 2005 through 2009, PHMSA initiated over 1,300 enforcement actions against pipeline operators. Civil penalties proposed by PHMSA for safety violations during this period totaled approximately \$27.4 million.³² PHMSA also conducts accident investigations and systemwide reviews focusing on high-risk operational or procedural problems and areas of the pipeline near sensitive environmental areas, high-density populations, or navigable waters.

Since 1997, PHMSA has increasingly encouraged industry's implementation of "integrity management" programs on pipeline segments near "high consequence" areas. Integrity

²⁷ Safety and security of liquified natural gas (LNG) facilities used in gas pipeline transportation is regulated under CFR Title 49, Part 193.

²⁸ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Appendix*, February 2010, p. 989.

²⁹ 49 U.S.C. 601. States may recover up to 50% of their costs for these programs from the federal government.

³⁰ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2010: Appendix*, February 2009, p. 952.

³¹ U.S. Office of Management and Budget, February 2010, p. 988.

³² Pipeline and Hazardous Material Safety Administration (PHMSA), "PHMSA Pipeline Safety Program: Summary of Enforcement Actions," Web page, January 25, 2010. http://primis.phmsa.dot.gov/comm/reports/enforce/Actions_opid_0.html

management provides for continual evaluation of pipeline condition; assessment of risks to the pipeline; inspection or testing; data analysis; and followup repair, as well as preventive or mitigative actions. High-consequence areas include population centers, commercially navigable waters, and environmentally sensitive areas, such as drinking water supplies or ecological reserves. The integrity management approach directs priority resources to locations of highest consequence rather than applying uniform treatment to the entire pipeline network.³³ PHMSA made integrity management programs mandatory for most operators with 500 or more miles of regulated oil pipeline as of March 31, 2001 (49 C.F.R. § 195).

Pipeline Safety Improvement Act of 2002

On December 12, 2002, President Bush signed into law the Pipeline Safety Improvement Act of 2002 (P.L. 107-355). The act strengthened federal pipeline safety programs, state oversight of pipeline operators, and public education regarding pipeline safety.³⁴ Among other provisions, P.L. 107-355 required operators of regulated gas pipelines in high-consequence areas to conduct risk analysis and implement integrity management programs similar to those required for oil pipelines.³⁵ The act authorized the DOT to order safety actions for pipelines with potential safety problems (§ 7) and increased violation penalties (§ 8). The act streamlined the permitting process for emergency pipeline restoration by establishing an interagency committee, including the DOT, the Environmental Protection Agency, the Bureau of Land Management, the Federal Energy Regulatory Commission, and other agencies, to ensure coordinated review and permitting of pipeline repairs (§ 16). The act required DOT to study ways to limit pipeline safety risks from population encroachment and ways to preserve environmental resources in pipeline rights-of-way (§ 11). P.L. 107-355 also included provisions for public education, grants for community pipeline safety studies, “whistle blower” and other employee protection, employee qualification programs, and mapping data submission.

OPS Pipeline Security Activities

Presidential Decision Directive 63 (PDD-63), issued during the Clinton administration, assigned lead responsibility for pipeline security to the DOT.³⁶ At the time, these responsibilities fell to the OPS, at that time a part of the DOT’s Research and Special Programs Administration (RSPA), since the agency was already addressing some elements of pipeline security in its role as safety regulator. In 2002, the OPS conducted a vulnerability assessment to identify critical pipeline facilities and worked with industry groups and state pipeline safety organizations “to assess the

³³ Research and Special Programs Administration (RSPA), *Pipeline Safety. Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators with 500 or More Miles of Pipeline)*, *Federal Register*, December 1, 2000, p. 75378.

³⁴ P.L. 107-355 encourages the implementation of state “one-call” excavation notification programs (§ 2) and allows states to enforce “one-call” program requirements. The act expands criminal responsibility for pipeline damage to cases where damage was not caused “knowingly and willfully” (§ 3). The act adds provisions for ending federal-state pipeline oversight partnerships if states do not comply with federal requirements (§ 4).

³⁵ A 2006 Government Accountability Office (GAO) report found that PHMSA’s gas integrity management program benefitted public safety, although the report recommended revisions to PHMSA’s performance measures. See GAO. *Natural Gas Pipeline Safety: Integrity Management Benefits Public Safety, but Consistency of Performance Measures Should Be Improved*, GAO-06-946, September 8, 2006, pp. 2-3.

³⁶ Presidential Decision Directive 63, *Protecting the Nation’s Critical Infrastructures*, May 22, 1998.

industry's readiness to prepare for, withstand and respond to a terrorist attack....³⁷ Together with the Department of Energy and state pipeline agencies, the OPS promoted the development of consensus standards for security measures tiered to correspond with the five levels of threat warnings issued by the Office of Homeland Security.³⁸ The OPS also developed protocols for inspections of critical facilities to ensure that operators implemented appropriate security practices. To convey emergency information and warnings, the OPS established a variety of communication links to key staff at the most critical pipeline facilities throughout the country. The OPS also began identifying near-term technology to enhance deterrence, detection, response, and recovery, and began seeking to advance public and private sector planning for response and recovery.³⁹

On September 5, 2002, the OPS circulated formal guidance developed in cooperation with the pipeline industry associations defining the agency's security program recommendations and implementation expectations. This guidance recommended that operators identify critical facilities, develop security plans consistent with prior trade association security guidance, implement these plans, and review them annually.⁴⁰ While the guidance was voluntary, the OPS expected compliance and informed operators of its intent to begin reviewing security programs within 12 months, potentially as part of more comprehensive safety inspections.⁴¹

In November 2004, the President signed the Norman Y. Mineta Research and Special Programs Improvement Act (P.L. 108-426), which eliminated RSPA and placed the Office of Pipeline Safety under the new Pipeline and Hazardous Material Safety Administration. This administrative restructuring did not significantly affect the authorities or activities of the OPS.

Transportation Security Administration

In November 2001, President Bush signed the Aviation and Transportation Security Act (P.L. 107-71) establishing the Transportation Security Administration (TSA) within the DOT. According to TSA, the act placed the DOT's pipeline security authority (under PDD-63) within TSA. The act specified for TSA a range of duties and powers related to general transportation security, such as intelligence management, threat assessment, mitigation, security measure oversight and enforcement, among others. On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296) creating the Department of Homeland Security (DHS). Among other provisions, the act transferred to DHS the Transportation Security Administration from the DOT (§ 403). On December 17, 2003, President Bush issued Homeland Security Presidential Directive 7 (HSPD-7), clarifying executive agency responsibilities for identifying, prioritizing, and protecting critical infrastructure.⁴² HSPD-7 maintains DHS as the lead agency for pipeline security (par. 15), and instructs the DOT to "collaborate in regulating the transportation of hazardous materials by all modes (including pipelines)" (par. 22h). The order

³⁷ Research and Special Programs Administration (RSPA), *RSPA Pipeline Security Preparedness*, December 2001.

³⁸ Ellen Engleman, Administrator, Research and Special Programs Administration (RSPA), statement before the Subcommittee on Energy and Air Quality, House Energy and Commerce Committee, March 19, 2002.

³⁹ Ellen Engleman, Administrator, Research and Special Programs Administration (RSPA), statement before the Subcommittee on Highways and Transit, House Transportation and Infrastructure Committee, February 13, 2002.

⁴⁰ James K. O'Steen, Research and Special Programs Administration (RSPA), *Implementation of RSPA Security Guidance*, presentation to the National Association of Regulatory Utility Commissioners, February 25, 2003.

⁴¹ Office of Pipeline Safety (OPS), personal communication, June 10, 2003.

⁴² HSPD-7 supersedes PDD-63 (par. 37).

requires that DHS and other federal agencies collaborate with “appropriate private sector entities” in sharing information and protecting critical infrastructure (par. 25). TSA joined both the Energy Government Coordinating Council and the Transportation Government Coordinating Council under provisions in HSPD-7. The missions of the councils are to work with their industry counterparts to coordinate critical infrastructure protection programs in the energy and transportation sectors, respectively, and to facilitate the sharing of security information.

TSA Pipeline Security Plan

HSPD-7 also required DHS to develop a national plan for critical infrastructure and key resources protection (par. 27), which the agency issued in 2006 as the *National Infrastructure Protection Plan* (NIPP). The NIPP, in turn, required each critical infrastructure sector to develop a Sector Specific Plan (SSP) that describes strategies to protect its critical infrastructure, outlines a coordinated approach to strengthen its security efforts, and determines appropriate funding for these activities. Executive Order 13416 further required the transportation sector SSP to prepare annexes for each mode of surface transportation with the following information:

- identification of existing security guidelines, requirements, and gaps,
- description of how the SSP plan will be implemented for each mode,
- respective roles of government entities and the private sector,
- processes for review of information sharing mechanisms, and
- processes for assessing security guideline compliance and revision.⁴³

In accordance with the above requirements the TSA issued its *Transportation Systems Sector Specific Plan* and *Pipeline Modal Annex* in May, 2007.

TSA Pipeline Security Activities

Pipeline security activities at TSA are led by the Pipeline Security Division (PSD) within the agency’s Office of Transportation Sector Network Management.⁴⁴ According to the agency’s *Pipeline Modal Annex* (PMA), TSA has been engaged in a number of specific pipeline security initiatives since 2003 as summarized in **Table 1**.

Table 1. TSA Pipeline Security Initiatives

| Initiative | Description | Participants ^o |
|---|--|------------------------------------|
| Pipeline Policy and Planning | Coordination, development, implementation, and monitoring of pipeline security plans | TSA, DHS, DOT, DOE |
| Sector Coordinating Councils and Joint Sector Committee | Government partners coordinate interagency and cross-jurisdictional implementation of critical infrastructure security | TSA, DOE, Other agencies, Industry |
| Corporate Security | On-site reviews of pipeline operator security | TSA, Industry |

⁴³ Executive Order 13416, “Strengthening Surface Transportation Security,” December 5, 2006.

⁴⁴ These offices were formerly known as the Pipeline Security Program Office and the Intermodal Security Program Office, respectively.

| Initiative | Description | Participants ⁰ |
|---|---|---------------------------------------|
| Reviews (CSR) | | |
| Pipeline System Risk Tool | Statistical tool used for relative risk ranking and prioritizing CSR findings | TSA, Industry |
| Pipeline Cross-Border Vulnerability Assessment | U.S. and Canadian security assessment and planning for critical cross-border pipeline | TSA, Canada |
| Regional Gas Pipeline Studies | Regional supply studies for key natural gas markets | TSA, DOE, INGAA, GTI, NETL, Industry |
| Cyber Attack Awareness | Training/presentations on Supervisory Control and Data Acquisition (SCADA) system vulnerabilities | TSA, GTI |
| Landscape Depiction and Analysis Tool | Incorporates depiction of the pipeline domain with risk analysis components | TSA |
| International Pipeline Security Forums | International forums for U.S. and Canadian governments and pipeline industry officials convened annually | TSA, Canada, Other agencies, Industry |
| “G8” Multinational Security Assessment and Planning | Multinational-sharing of pipeline threat assessment methods, advisory levels, effective practices, and vulnerability information; also develops a G8-based contingency planning guidance document | TSA, DHS, State Dept., G8 Nations |
| Pipeline Security Drills | Facilitation of pipeline security drills and exercises | TSA, Industry |
| Security Awareness Training | Informational compact discs about pipeline security issues and improvised explosive devices | TSA |
| Stakeholder Conference Calls | Periodic information-sharing conference calls between key pipeline security stakeholders | TSA, Other agencies, Industry |
| Pipeline Blast Mitigation Studies | Explosives tests on various pipe configurations to determine resiliency characteristics | TSA, DOD, Other agencies |
| Virtual Library Pipeline Site | Development of TSA information-sharing Web portal | TSA |

Sources: Transportation Security Administration, Pipeline Modal Annex, June 2007, pp. 10-11, http://www.dhs.gov/xlibrary/assets/Transportation_Pipeline_Modal_Annex_5_21_07.pdf; Transportation Security Administration, Personal communication, February 2, 2010.

- a. **Key:** DHS = Dept. Of Homeland Security, DOE = Dept. of Energy, G8 = Group of Eight (U.S., U.K., Canada, France, Germany, Italy, Japan, and Russia), GTI = Gas Technology Institute, INGAA = Interstate Natural Gas Association of America, NETL = National Energy Technology Laboratory, TSA = Transportation Security Administration.

In 2003, TSA initiated its Corporate Security Review (CSR) program, wherein the agency visits the largest pipeline and natural gas distribution operators to review their security plans and inspect their facilities. During the reviews, TSA evaluates whether each company is following the intent of the OPS security guidance, and seeks to collect the list of assets each company had identified meeting the criteria established for critical facilities. In 2004, the DOT reported that the plans reviewed to date (approximately 25) had been “judged responsive to the OPS guidance.”⁴⁵ As of February 2010, TSA had completed CSR’s covering all of the largest 100 pipeline systems (84% of total U.S. energy pipeline throughput) and had completed revisits of 41 systems

⁴⁵ Department of Transportation (DOT), “Action Taken and Actions Needed to Improve Pipeline Safety,” CC-2004-061, June 16, 2004, p. 21.

determined to be at highest risk. The agency plans to conduct 12 additional CSR's in 2010.⁴⁶ According to TSA, recent CSR results indicate that the majority of U.S. pipeline systems "continue to do a good job in regards to pipeline security" although there are areas in which pipeline security can be improved.⁴⁷ Past CSR reviews have identified inadequacies in some company security programs such as not updating security plans, lack of management support, poor employee involvement, inadequate threat intelligence, and employee apathy or error.⁴⁸

In addition to the initiatives in **Table 1**, TSA has worked to establish qualifications for personnel seeking unrestricted access to critical pipeline assets and has developed its own inventory of critical pipeline infrastructure.⁴⁹ The agency has also addressed legal issues regarding recovery from terrorist attacks, such as FBI control of crime scenes and eminent domain in pipeline restoration. In October 2005, TSA issued an overview of recommended security practices for pipeline operators "for informational purposes only ... not intended to replace security measures already implemented by individual companies."⁵⁰ The agency released revised guidance on security best practices at the end of 2006, and is currently reviewing an updated version for possible release in 2010.⁵¹ The guidelines include a section on cybersecurity developed with the assistance of the Applied Physics Laboratory of John Hopkins University as well as other government and industry stakeholders.⁵²

The mission of TSA's Pipeline Security Division (PSD) currently includes developing security standards; implementing measures to mitigate security risk; building and maintaining stakeholder relations, coordination, education and outreach; and monitoring compliance with security standards, requirements, and regulations. The President's FY2011 budget request for DHS does not include a separate line item for TSA's pipeline security activities. The budget request does include a \$137.6 million line item for "Surface Transportation Security," which encompasses security activities in non-aviation transportation modes, including pipelines.⁵³ The PSD has traditionally received from the agency's general operational budget an allocation for routine operations such as regulation development, travel, and outreach. According to the PSD, the budget funds 13 full-time equivalent staff within the office. These staff will conduct pipeline security inspections, maintain TSA's asset database, support TSA's multi-modal risk models, develop new security standards, and issue regulations, as required.⁵⁴

In January, 2007 testimony before Congress, the TSA Administrator stated that the agency intended to conduct a pipeline infrastructure study to identify the "highest risk" pipeline assets, building upon such a list developed through the CSR program. He also stated that the agency would use its ongoing security review process to determine the future implementation of baseline

⁴⁶ Transportation Security Administration, Personal communication, February 2, 2010.

⁴⁷ Ibid.

⁴⁸ Mike Gillenwater, TSA, "Pipeline Security Overview," Presented to the Alabama Public Service Commission Gas Pipeline Safety Seminar, Montgomery, AL, December 11, 2007.

⁴⁹ TSA, *TSA Multi-Modal Criticality Evaluation Tool*, TSA Threat Assessment and Risk Management Program, slide presentation, April 15, 2003.

⁵⁰ TSA, Intermodal Security Program Office, *Pipeline Security Best Practices*, October 19, 2005, p. 1.

⁵¹ Transportation Security Administration, Personal communication, February 2, 2010.

⁵² Ibid.

⁵³ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Appendix*, February 2010, p. 526.

⁵⁴ Transportation Security Administration, Pipeline Security Division, personal communication, February 2, 2010.

risk standards against which to set measurable pipeline risk reduction targets.⁵⁵ Provisions in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) require TSA, in consultation with PHMSA, to develop a plan for the federal government to provide increased security support to the “most critical” pipelines at high or severe security alert levels and when there is specific security threat information relating to such pipeline infrastructure (§ 1558(a)(1)). The act also requires a recovery protocol plan in the event of an incident affecting the interstate and intrastate pipeline system (§ 1558(a)(2)). According to TSA, a draft plan has been completed and is currently under review in the TSA/DHS clearance process.⁵⁶

In December 2008, the Senate Committee on Commerce, Science, and Transportation requested a study by the Government Accountability Office (GAO) examining TSA’s efforts to ensure pipeline security. Among other issues, the study will examine TSA’s use of risk assessment and risk information in securing pipelines, actions the agency has taken to improve pipeline security under guidance in the 9/11 Commission Act of 2007 (P.L. 110-53), and the agency’s efforts to measure such security improvement efforts. GAO anticipates completing its study in June 2010.⁵⁷

Security Incident Investigations

In addition to the above pipeline security initiatives, the TSA Pipeline Security Division has performed a limited number of vulnerability assessments and has supported investigations for specific companies and assets where intelligence information has suggested potential terrorist activity. The PSD, along with the PHMSA, was involved in the investigation of an August, 2006 security breach at an LNG peak-shaving plant in Lynn, MA.⁵⁸ Although not a terrorist incident, the security breach involved the penetration of intruders through several security barriers and alert systems, permitting them to access the main LNG storage tank at the facility. The PSD also became aware of the JFK airport terrorist plot in its early stages and supported the Federal Bureau of Investigation’s associated investigation. The PSD engaged the private sector in helping to assess potential targets and determine potential consequences. The PSD worked with the pipeline company to keep it informed about the plot, discuss its security practices, and review its emergency response plans.⁵⁹

Federal Energy Regulatory Commission

One area related to pipeline safety and security not under either PHMSA’s or TSA’s primary jurisdiction is the siting approval of new gas pipelines, which is the responsibility of the Federal Energy Regulatory Commission (FERC). Companies building interstate natural gas pipelines must first obtain from FERC certificates of public convenience and necessity. (FERC does not oversee oil pipeline construction.) FERC must also approve the abandonment of gas facility use

⁵⁵ Hawley, Kip, Asst. Secretary, Dept. of Homeland Security, Testimony before the Senate Committee on Commerce, Science, and Transportation hearing on Federal Efforts for Rail and Surface Transportation Security, January 18, 2007.

⁵⁶ Transportation Security Administration, personal communication, February 2, 2010.

⁵⁷ Government Accountability Office, *GAO Watchdog*, “Transportation Security’s Efforts To Ensure Pipeline Security,” Assignment No. 440768, Internet database, February 4, 2010.

⁵⁸ Pipeline and Hazardous Materials Safety Administration (PHMSA), “Pipeline Safety: Lessons Learned From a Security Breach at a Liquefied Natural Gas Facility,” Docket No. PHMSA-04-19856, *Federal Register*, Vol. 71, No. 249, December 28, 2006, p. 78269; TSA, Intermodal Security Program Office, personal communication, August 30, 2006.

⁵⁹ TSA, July 6, 2007.

and services. These approvals may include safety and security provisions with respect to pipeline routing, safety standards and other factors.⁶⁰ As a practical matter, however, FERC has traditionally left these considerations to the other agencies.⁶¹

On September 14, 2001, the Federal Energy Regulatory Commission (FERC) notified FERC-regulated companies that it would “approve applications proposing the recovery of prudently incurred costs necessary to further safeguard the nation’s energy systems and infrastructure” in response to the terror attacks of 9/11. FERC also committed to “expedite the processing on a priority basis of any application that would specifically recover such costs from wholesale customers.” Companies could propose a surcharge over currently existing rates or some other cost recovery method.⁶² In FY2005, the commission processed security cost recovery requests from 14 oil pipelines and 3 natural gas pipelines.⁶³ The FERC’s FY2006 annual report states that “the Commission continues to give the highest priority to deciding any requests made for the recovery of extraordinary expenditures to safeguard the reliability and security of the Nation’s energy transportation systems and energy supply infrastructure.”⁶⁴ The FY2007 and FY2008 annual reports do not mention pipeline security.

In February 2003, FERC handed down a new rule (RM02-4-000) to protect critical energy infrastructure information (CEII). The rule defines CEII as information that “must relate to critical infrastructure, be potentially useful to terrorists, and be exempt from disclosure under the Freedom of Information Act.” According to the rule, critical infrastructure is “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” CEII excludes “information that identifies the location of infrastructure.” The rule also establishes procedures for the public to request and obtain such critical information, and applies both to proposed and existing infrastructure.⁶⁵

On May 14, 2003, FERC handed down new rules (RM03-4) facilitating the restoration of pipelines after a terrorist attack. The rules allow owners of a damaged pipeline to use blanket certificate authority to immediately start rebuilding, regardless of project cost, even outside existing rights-of-way. Pipeline owners would still need to notify landowners and comply with environmental laws. Prior rules limited blanket authority to \$17.5 million projects and 45-day advance notice.⁶⁶

Key Policy Issues

The 111th Congress is overseeing the implementation of the Pipeline Safety Improvement Act of 2006 (P.L. 109-468) and pipeline security provisions in the Implementing Recommendations of

⁶⁰ U.S. Code of Federal Regulations. 18 C.F.R. 157.

⁶¹ Federal Energy Regulatory Commission (FERC), personal communication, May 22, 2003.

⁶² Federal Energy Regulatory Commission (FERC), News release, R-01-38, Washington, DC, September 14, 2001.

⁶³ Federal Energy Regulatory Commission (FERC), *Federal Energy Regulatory Commission Annual Report FY2005*, 2006, p. 19. These are the most recent specific figures reported.

⁶⁴ Federal Energy Regulatory Commission (FERC), *Federal Energy Regulatory Commission Annual Report FY2006*, 2007, p. 23.

⁶⁵ Federal Energy Regulatory Commission (FERC), News release, R-03-08, Washington, DC. February 20, 2003.

⁶⁶ Schmollinger, Christian, “FERC OKs Emergency Reconstruction,” *Natural Gas Week*, May 13, 2003.

the 9/11 Commission Act of 2007 (P.L. 110-53). It is also considering several new legislative proposals, further discussed below. In its ongoing oversight of federal pipeline safety and security activities, Congress may examine a number of key issues which have drawn particular attention in policy debate.

Pipeline Damage Prevention

According to PHMSA statistics, excavation damage was the single greatest cause of accidents among all pipeline systems between 1989 and 2008.⁶⁷ Some policy makers have proposed the establishment of federal civil penalties for violations of state “one-call” notification programs to prevent excavation damage to underground pipelines. Other stakeholders have argued that such enforcement is best performed by state regulators responsible for administering one-call programs rather than by the federal government, unless the federal government determines that a state’s enforcement efforts are ineffective.⁶⁸ Consistent with this approach, P.L. 109-468 prohibits federal enforcement in states already imposing such penalties (§ 2). The act also authorizes grants to states (and certain municipalities) for improving damage prevention programs if the states have been certified (under 49 U.S.C. § 60105-60106) or can demonstrate that they are establishing an “effective” program, as subsequently defined (§ 2).

On October 29, 2009, PHMSA issued an Advanced Notice of Proposed Rulemaking (ANOPR) seeking comments on proposed regulations which would establish criteria for determining adequate state enforcement of pipeline damage prevention laws.⁶⁹ According to one legal analysis, this ANOPR “is the first step in a rulemaking process that could lead to the implementation of new civil penalty enforcement authority against excavators who may cause damage to pipelines” in the absence of enforcement action by the state where the events occurred. Comments on the ANOPR were due by December 14, 2009. The agency has not yet issued a final rule. The timing and effectiveness of PHMSA’s new regulations may be an oversight consideration for Congress.

Low-Stress Pipeline Regulations

Pipelines operated at less than 20% of the specified minimum strength of the material from which they are constructed are classified as “low-stress” pipelines under 49 C.F.R. § 195.2. The regulation of low-stress pipeline regulations has come under greater Congressional scrutiny since March 2006, after a spill from a BP oil pipeline led to the partial shutdown of the Prudhoe Bay area oil field on the North Slope of Alaska. In its March 15, 2006, Corrective Action Order, PHMSA found that BP’s pipelines met the definition of a “hazardous pipeline facility” under 49 U.S.C. § 60112(a), which grants general authority under the statute, but that specific federal pipeline safety regulations under 49 C.F.R. § 195 did not apply at that time because BP’s pipelines were classified as “low-stress” and fell under the exception in 49 C.F.R. § 195.1(b)(3).⁷⁰

⁶⁷ Pipeline and Hazardous Materials Safety Admin., “Damage Prevention,” Web page, October 14, 2009, <http://primis.phmsa.dot.gov/comm/DamagePrevention.htm?nocache=403>.

⁶⁸ Felt, T., President and CEO, Explorer Pipeline, Statement before the House Committee on Energy and Commerce, Subcommittee on Energy and Air Quality hearing on Reauthorization of the Pipeline Safety Act, July 27, 2006.

⁶⁹ Department of Transportation, Pipeline and Hazardous Material Safety Administration, “Pipeline Safety: Pipeline Damage Prevention Programs,” 74 *Federal Register* 55798, October 29, 2009.

⁷⁰ Pipeline and Hazardous Material Safety Admin. (PHMSA), *Corrective Action Order in the Matter of BP Exploration* (continued...)

P.L. 109-468 required PHMSA to promulgate final regulations for low-stress hazardous liquids pipelines by December 31, 2007 (§ 4). The agency issued the final regulations effective July 3, 2008.⁷¹ In overseeing the implementation of PHMSA's final criteria for low-stress pipeline regulation, Congress may consider the balance between the potential safety benefits and the potential costs of stricter safety programs in light of BP's pipeline problems and potential problems among similar pipeline systems elsewhere in the United States.

PHMSA Safety Enforcement

The adequacy of the PHMSA's enforcement strategy has been an ongoing concern of Congress, particularly after the fatal pipeline accidents in Washington and New Mexico. Provisions in the Pipeline Safety Improvement Act of 2002 (P.L. 107-355) put added scrutiny on the effectiveness of the agency's enforcement strategy and assessment of civil penalties (§ 8). In March 2006 testimony before Congress, the Government Accountability Office (GAO) reported that PHMSA had adopted measures that appeared to be responsive to earlier concerns about enforcement, although the GAO had not reviewed the strategy or its implementation in depth.⁷²

In April 2006, PHMSA testified before Congress that the agency had institutionalized a “tough-but-fair” approach to enforcement, “imposing and collecting larger penalties, while guiding pipeline operators to enhance higher performance.”⁷³ According to the agency, \$4.6 million in proposed civil penalties in 2005 was three times greater than penalties proposed in 2003, the first year higher penalties could be imposed under P.L. 107-355 (§ 8(a)).⁷⁴ P.L. 109-468 required the agency to issue monthly summaries of PHMSA enforcement actions including violation and penalty information for each action, and provide a mechanism for pipeline operators to make response information available to the public (§ 6). To meet these requirements, PHMSA has established an Internet portal with pipeline safety enforcement information.⁷⁵ Proposed penalties totaled \$6.5 million in 2009 including a reported \$2.3 million fine—the largest single fine in the agency's history—levied against El Paso Corporation stemming from a 2006 fatal pipeline accident near Cheyenne, Wyoming.⁷⁶

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(*Alaska*), Inc., Respondent, CPF No. 5-2006-5015H, March 15, 2006.

⁷¹ Pipeline and Hazardous Materials Safety Administration (PHMSA), “Protecting Unusually Sensitive Areas From Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines: Final Rule,” PHMSA—RSPA—2003—15864, *Federal Register*, Vol. 73, June 3, 2008. p. 31634.

⁷² Siggerud, K. Government Accountability Office (GAO), Testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit and Pipelines hearing on Pipeline Safety, GAO-06-474T, March 16, 2006, p. 11.

⁷³ Gerard, S.L., Pipeline and Hazardous Materials Admin.(PHMSA), Testimony before the House Energy and Commerce Committee, Energy and Air Quality Subcommittee hearing on Pipeline Safety, Serial No. 109-84, April 27, 2006, p. 14.

⁷⁴ Ibid.

⁷⁵ Pipeline and Hazardous Material Safety Administration (PHMSA), “PHMSA Pipeline Safety Program: Enforcement,” Web page, May 15, 2007. <http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html>

⁷⁶ Pipelines and Hazardous Materials Safety Admin. (PHMSA), “Civil Penalty Cases: Nationwide,” Web page, January 25, 2010. http://primis.phmsa.dot.gov/comm/reports/enforce/CivilPenalty_opid_0.html?nocache=4013; “Colorado Pipeline Company Fined 2.3 Million After Explosion,” *Clean Skies News*, December 1, 2009.

TSA and PHMSA Cooperation

Congress has long raised questions about the appropriate responsibilities and division of pipeline security authority between PHMSA and TSA.⁷⁷ Both PHMSA and TSA have played important roles in the federal pipeline security program, with TSA the designated lead agency since 2002. In 2004, the DOT and DHS entered into a memorandum of understanding (MOU) concerning their respective security roles in all modes of transportation. The MOU notes that DHS has the primary responsibility for transportation security with support from the DOT, and establishes a general framework for cooperation and coordination. The MOU states that “specific tasks and areas of responsibility that are appropriate for cooperation will be documented in annexes ... individually approved and signed by appropriate representatives of DHS and DOT.”⁷⁸ On August 9, 2006, the departments signed an annex “to delineate clear lines of authority and responsibility and promote communications, efficiency, and nonduplication of effort through cooperation and collaboration between the parties in the area of transportation security.”⁷⁹

In January, 2007, the PHMSA Administrator testified before Congress that the agency had established a joint working group with TSA “to improve interagency coordination on transportation security and safety matters, and to develop and advance plans for improving transportation security,” presumably including pipeline security.⁸⁰ According to TSA, the working group developed a multi-year action plan specifically delineating roles, responsibilities, resources and actions to execute 11 program elements: identification of critical infrastructure/key resources and risk assessments; strategic planning; developing regulations and guidelines; conducting inspections and enforcement; providing technical support; sharing information during emergencies; communications; stakeholder relations; research and development; legislative matters; and budgeting.⁸¹

P.L. 109-468 required the DOT Inspector General (IG) to assess the pipeline security actions taken by the DOT in implementing its 2004 MOU with the DHS (§ 23). The Inspector General published this assessment in May 2008. The IG report stated that

PHMSA and TSA have taken initial steps toward formulating an action plan to implement the provisions of the pipeline security annex.... However, further actions need to be taken with a sense of urgency because the current situation is far from an “end state” for enhancing the security of the Nation’s pipelines.⁸²

⁷⁷ For example, see Hon. William J. Pascrell, Jr., statement at the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit and Pipelines, hearing on Pipeline Safety, March 16, 2006.

⁷⁸ Dept. of Homeland Security (DHS) and Dept. of Transportation (DOT), *Memorandum of Understanding Between the Department of Homeland Security and the Department of Transportation on Roles and Responsibilities*, September 28, 2004, p. 4.

⁷⁹ Transportation Security Admin. and Pipelines and Hazardous Materials Safety Admin., “Transportation Security Administration and Pipelines and Hazardous Materials Safety Administration Cooperation on Pipelines and Hazardous Materials Transportation Security,” August 9, 2006.

⁸⁰ Barrett, T.J., Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA), Testimony before the Senate Committee on Commerce, Science, and Transportation hearing on Federal Efforts for Rail and Surface Transportation Security, January 18, 2007.

⁸¹ Transportation Security Administration, Pipeline Security Division, personal communication, July 6, 2007.

⁸² U.S. Dept. of Transportation, Office of Inspector General, *Actions Needed to Enhance Pipeline Security, Pipeline and Hazardous Materials Safety Administration*, Report No. AV-2008-053, May 21, 2008, p. 3.

The report recommended that PHMSA and TSA finalize and execute their security annex action plan, clarify their respective roles specifically in LNG facility security, and jointly develop a pipeline security strategy that maximizes the effectiveness of their respective capabilities and efforts.⁸³ According to TSA, working with PHMSA “improved drastically” after the release of the IG report; the two agencies began to maintain daily contact, share information in a timely manner, and collaborate on security guidelines and incident response planning.⁸⁴ According to the agency, TSA and PHMSA “continue to enjoy a 24/7 communication and coordination relationship in regards to all pipeline security and safety incidents.”⁸⁵

While TSA and PHMSA appear to have recently improved their cooperation under the terms of the pipeline security annex, questions remain regarding what this cooperation entails and the ongoing roles of the two agencies with respect to pipeline security. In particular, given the limited staff in TSA’s pipeline security division, and the comparatively large pipeline safety staff (especially field inspectors) in PHMSA, Congress may consider whether the TSA-PHMSA pipeline security annex optimally aligns staff resources across both agencies to fulfill the nation’s overall pipeline safety and security mission. H.R. 2200 would require a study reexamining the roles and responsibilities of DHS and DOT with respect to pipeline security (§ 406).

Pipeline Security Regulations

As noted earlier in this report, federal pipeline security activities to date have relied upon voluntary industry compliance with PHMSA security guidance and TSA security best practices. By initiating this voluntary approach, PHMSA sought to speed adoption of security measures by industry and avoid the publication of sensitive security information (e.g., critical asset lists) that would normally be required in public rulemaking.⁸⁶ Provisions in P.L. 109-468 require the DOT Inspector General to “address the adequacy of security standards for gas and oil pipelines” (§ 23(b)(4)). P.L. 110-53 similarly directs TSA to promulgate pipeline security regulations and carry out necessary inspection and enforcement—if the agency determines that regulations are appropriate (§ 1557(d)). Addressing this issue the 2008 IG report states that

TSA’s current security guidance is not mandatory and remains unenforceable unless a regulation is issued to require industry compliance.... PHMSA and TSA will need to conduct covert tests of pipeline systems’ vulnerabilities to assess the current guidance as well as the operators’ compliance.⁸⁷

Although TSA’s FY2005 budget justification stated that the agency would “issue regulations where appropriate to improve the security of the [non-aviation transportation] modes,” the agency has not done so for pipelines, and is not currently working on such regulations.⁸⁸ The pipelines industry has expressed concern that new security regulations and related requirements may be

⁸³ Ibid. pp. 5-6.

⁸⁴ Transportation Security Administration, Personal communication, February 2, 2010.

⁸⁵ TSA, Pipeline Security Division, personal communication, July 6, 2007.

⁸⁶ GAO, *Pipeline Security and Safety: Improved Workforce Planning and Communication Needed*, GAO-02-785, August 2002, p. 22.

⁸⁷ U.S. Dept. of Transportation, Office of Inspector General, May 21, 2008, p. 6.

⁸⁸ Department of Homeland Security (DHS), *Transportation Security Administration Fiscal Year 2005 Congressional Budget Justification*, Washington, DC, February 2, 2004, p. 20; TSA, Pipeline Security Division, personal communication, February 17, 2009.

“redundant” and “may not be necessary to increase pipeline security.”⁸⁹ The PHMSA Administrator in 2007 testified that enhancing security “does not necessarily mean that we must impose regulatory requirements.”⁹⁰ TSA officials have questioned the IG assertions regarding pipeline security regulations, particularly the IG’s call for covert testing of pipeline operator security measures. They have argued that the agency is complying with the letter of P.L. 110-53 and that its pipeline operator security reviews are more than paper reviews.⁹¹ In accordance with P.L. 110-53 (§ 1557 (b)), has been implementing a multi-year program of pipeline system inspections, including documentation of findings and follow up reviews.⁹² In its oversight of potential pipeline security regulations, Congress may evaluate the effectiveness of the current voluntary pipeline security standards based on findings from the TSA’s CSR reviews, pipeline inspections, and future DOT Inspector General reports.

TSA Pipelines Security Resources

Congress has been critical in the past of TSA’s funding of non-aviation security activities, including pipeline activities. For example, as one Member remarked in 2005, “aviation security has received 90% of TSA’s funds and virtually all of its attention. There is simply not enough being done to address ... pipeline security.”⁹³ At its current staffing level, TSA’s Pipelines Security Division has limited field presence for inspections and possible enforcement of future regulations. In conducting a pipeline corporate security review, for example, TSA typically sends one to three staff to hold a three- to four-hour interview with the operator’s security representatives followed by a visit to only one or two of the operator’s pipeline assets.⁹⁴

TSA’s plan to focus security inspections on the largest pipeline and distribution system operators seeks to make the best use of its limited resources. However, there is concern that the agency’s CSRs as currently structured may not allow for rigorous security plan verification nor a credible threat of enforcement, so operator compliance with security guidance may be inadequate, leaving the pipeline network as a whole less secure than it might be with more universal inspection and enforcement coverage. The limited number of CSRs the agency can complete in a year is also a concern. According to a 2009 GAO report, “TSA’s pipeline division stated that they would like more staff in order to conduct its corporate security reviews more frequently,” and “analyzing secondary or indirect consequences of a terrorist attack and developing strategic risk objectives required much time and effort.”⁹⁵

⁸⁹ American Gas Association (AGA), American Petroleum Institute (API), Association of Oil Pipelines (AOPL), and American Public Gas Association (APGA), joint letter to members of the Senate Commerce Committee providing views on S. 1052, August 22, 2005.

⁹⁰ Barrett, T.J. January 18, 2007.

⁹¹ Sammon, John, Transportation Security Administration, Testimony before the House Transportation and Infrastructure Committee, Railroad, Pipelines, and Hazardous Materials Subcommittee hearing on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, June 24, 2008.

⁹² TSA, Pipeline Security Division, personal communication, February 17, 2009.

⁹³ Sen. Daniel K. Inouye, opening statement before the Senate Committee on Commerce, Science and Transportation, hearing on the President’s FY2006 Budget Request for the Transportation Security Administration (TSA), February 15, 2005.

⁹⁴ Department of Homeland Security, “Intent to Request Approval from OMB of One New Public Collection of Information: Pipeline Corporate Security Review,” 74 *Federal Register* 42086, August 20, 2009.

⁹⁵ U.S. Government Accountability Office, Transportation Security: Comprehensive Risk Assessments and Stronger Internal Controls Needed to Help Inform TSA Resource Allocation, GAO-09-492, March 2009, p. 30, (continued...)

P.L. 110-53 specifically authorizes funding of \$2 million annually through FY2010 for TSA's pipeline security inspections and enforcement program (§ 1557(e)). It is an open question whether \$2 million annually is sufficient to enable TSA to meet congressional expectations for federal pipeline security activities.

Additional Issues

In addition to the issues mentioned above, Congress may consider several issues related to proposed legislation or otherwise raised by pipeline stakeholders.

Distribution Integrity Management

As noted earlier in this report, integrity management programs were mandated for oil transmission pipelines in 2001 and for natural gas transmission pipelines in 2003. Congress and other stakeholders have since sought to extend these regulations to natural gas distribution pipelines, such as those operated by regional natural gas utilities. Because distribution pipelines are designed and operate differently from transmission lines, PHMSA has been developing approaches to structuring unique regulations for distribution systems. Natural gas distribution companies have sought flexible, risk-based options in any future integrity management regulations directed at distribution systems.⁹⁶ P.L. 109-468 mandated the promulgation by PHMSA of minimum standards for integrity management programs for distribution pipelines by December 31, 2007 (§ 9). PHMSA issued final regulations requiring operators of natural gas distribution pipelines to adopt integrity management programs similar to existing requirements for gas transmission pipelines on December 3, 2009.⁹⁷ As PHMSA's implementation of distribution integrity management continues, Congress may pay particular attention to whether compliance requirements balance the potential benefits of improved pipeline safety with the potential costs to distribution pipeline operators.

Mandatory Pipeline Assessment Intervals

The Pipeline Safety Improvement Act of 2002 requires that natural gas pipeline operators subject to the act perform integrity management reassessments at least every seven years after an initial baseline assessment (§ 14a). Some pipeline operators believe that this reassessment interval may be too prescriptive and may not be appropriate for all pipelines. Operators argue that assessing pipelines too frequently is costly and inefficient, diverting limited safety resources from other uses with greater pipeline safety benefits.⁹⁸ Based on assessments conducted through 2005, "and the generally safe condition of gas transmission pipelines," the GAO concluded in 2006 that the seven year reassessment interval "appears to be conservative."⁹⁹ The GAO recommended that

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<http://www.gao.gov/new.items/d09492.pdf>.

⁹⁶ E. F. Bender, Baltimore Gas and Electric Company, testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit and Pipelines, hearing on Pipeline Safety, March 16, 2006, p. 10.

⁹⁷ U.S. Department of Transportation, "DOT Issues Much-Anticipated Rules to Enhance Pipeline Safety," Office of Public Affairs, Press release, December 3, 2009.

⁹⁸ J. L. Mohn, Panhandle Energy, testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit and Pipelines, hearing on pipeline Safety, March 16, 2006, p. 9.

⁹⁹ Government Accountability Office (GAO), *Natural Gas Pipeline Safety: Risk-Based Standards Should Allow* (continued...)

Congress permit pipeline operators to reassess gas transmission pipelines at intervals based on risk factors, technical data, and engineering analyses. The agency believed such a revision would allow PHMSA more flexibility to establish longer or shorter reassessment intervals as warranted by pipeline conditions.¹⁰⁰ According to PHMSA testimony in June 2008, the Secretary of Transportation has corresponded with House Energy and Commerce committee regarding the agency's plans for exempting pipeline operators from the seven year interval requirement, but this correspondence has not been released publicly.¹⁰¹ PHMSA has since concurred with the GAO's recommendation for extending reassessment intervals and is reviewing its authority to do so through the grant of special permits to individual operators.¹⁰² S. 1333 would allow pipeline integrity reassessment intervals to be changed from seven years to intervals based on "technical data, risk factors, and engineering analysis" (§ 401).

Natural Gas Distribution Excess Flow Valves

Excess flow valves are safety devices located in pipelines which can automatically shut off the pipeline flow in the event of a pipeline rupture. In this way, the valves can minimize the release of hazardous liquids or gases during a pipeline accident, thereby reducing the likelihood or severity of a fuel fire or explosion. P.L. 109-468 required PHMSA to promulgate minimum standards for natural gas distribution systems requiring the installation of excess flow valves on new gas distribution lines in single-family homes (§ 9). The agency issued final regulations for excess flow valves as part of its final rule for natural gas distribution integrity management programs on December 3, 2009.¹⁰³ Some in Congress have proposed the extension of excess flow valve requirements beyond single-family homes.¹⁰⁴

TSA Pipeline Security Information Collection

In 2009, TSA proposed collecting security-related information from pipeline operators, including reports about security incidents (via the Transportation Security Operations Center). Among the types of incidents that would be reported on a voluntary basis are "theft of pipeline company vehicles, uniforms, or employee credentials" and various incidents or activities of a "suspicious" nature.¹⁰⁵ Some in industry have expressed concern that TSA's proposed incident reporting

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Operators to Better Tailor Reassessments to Pipeline Threats, GAO-06-945, September 8, 2006. p. 3.

¹⁰⁰ Ibid. p. 6.

¹⁰¹ Gerard, Stacy, Asst. Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA), Testimony before the House Transportation and Infrastructure Committee, Railroad, Pipelines, and Hazardous Materials Subcommittee hearing on Implementation of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, June 24, 2008.

¹⁰² E. Komiskey, Office of Pipeline Safety, "High Consequence Areas and Pipeline Assessment Intervals," *Pipeline Safety – What More Needs To Be Done?*, Pipeline Safety Trust Conference, New Orleans, November 20, 2008.

¹⁰³ U.S. Department of Transportation, "DOT Issues Much-Anticipated Rules to Enhance Pipeline Safety," Office of Public Affairs, Press release, December 3, 2009.

¹⁰⁴ Senator Frank R. Lautenberg, Statement before the Senate Committee on Commerce, Science, and Transportation, *Nominations Hearing*, 111th Cong., 1st sess., September 23, 2009.

¹⁰⁵ Department of Homeland Security, "Intent to Request Approval from OMB for One New Public Collection of Information: Pipeline Operator Security Information," 74 *Federal Register* 37723, July 29, 2009.

standards would expose them to civil liability and include “overbroad and unnecessary data categories,” especially with respect to the term “suspicious,” which TSA does not define.¹⁰⁶

In another 2009 filing, TSA proposes new procedures for members of the public to report to the agency a problem, deficiency, or vulnerability regarding transportation security, including pipeline transportation.¹⁰⁷ The proposal would fulfill requirements for such a reporting mechanism in P.L. 110-53 (§ 1413, 1521, and 1536). H.R. 4016 would establish a working group for the purpose of improving the collection and use of information about hazardous material transportation incidents (§ 203) and would increase PHMSA staffing by 84 employees (§ 304) to carry out its safety program. These provisions would apply to all modes of transportation, presumably including pipelines. As Congress continues its oversight of federal pipeline security and safety activities, it may seek to ensure that agencies are collecting pipeline incident information efficiently and consistently without creating an undue burden on the providers or on agency resources designated to utilize and maintain that information.

Conclusion

Both government and industry have taken numerous steps to improve pipeline safety and security since 2001. Although pipeline impacts on the environment remain a concern of some public interest groups, both federal government and industry representatives suggest that federal pipeline programs have been on the right track.

As oversight of the federal role in pipeline safety and security continues, questions may be raised concerning the effectiveness of state pipeline damage prevention programs, the promulgation of low-stress pipeline regulations, federal pipeline safety enforcement, the relationship between DHS and the DOT with respect to pipeline security, and particular provisions in federal pipeline safety regulation. In addition to these specific issues, Congress may wish to assess how the various elements of U.S. pipeline safety and security activity fit together in the nation’s overall strategy to protect transportation infrastructure. For example, diverting pipeline resources away from safety to enhance security might further reduce terror risk, but not overall pipeline risk, if safety programs become less effective as a result. Pipeline safety and security necessarily involve many groups: federal agencies, oil and gas pipeline associations, large and small pipeline operators, and local communities. Reviewing how these groups work together to achieve common goals could be an oversight challenge for Congress.

¹⁰⁶ Interstate Natural Gas Association of America, “Re: Intent to Request Approval from OMB of One New Public Collection of Information: Pipeline Operator Security Information,” Letter to the Transportation Security Administration, September 28, 2009, <http://www.ingaa.org/cms/30/9093.aspx>.

¹⁰⁷ Department of Homeland Security, “Reporting of Security Issues,” 74 *Federal Register* 43088-43091, August 26, 2009.

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